

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

ANTHONY LEE BUTLER

Movant,

V.

Case No. CV410-139
CR408-315

UNITED STATES OF AMERICA,

Respondent.

REPORT AND RECOMMENDATION

With his direct appeal from his guilty-plea conviction for violating 21 U.S.C. § 843(b) still pending, doc. 1131, Anthony Lee Butler has moved this Court for 28 U.S.C. § 2255 relief. Doc. 1132. That motion must be dismissed as premature. Absent extraordinary circumstances, a defendant may not seek collateral relief while his direct appeal is pending, as the appeal may moot some or all of the motion. *United States v. Khoury*, 901 F.2d 948, 969 n. 20 (11th Cir. 1990) (§ 2255 motion will not be entertained during pendency of a direct appeal); *Starr v. United States*, 2009 WL 995563 at * 1 (S.D. Ga. Apr 13, 2009) (§ 2255 motion dismissed as premature due to pendency of direct appeal).

Indeed, this Court is without jurisdiction to consider such claims. *United States v. Dunham*, 240 F.3d 1328, 1329-1330 (11th Cir. 2001); *Nunn v. United States*, 2010 WL 1038539 at * 1 (M.D. Ala. Feb. 19, 2010). Because Butler has not alleged any extraordinary circumstances justifying immediate review of his § 2255 motion, it should be **DISMISSED WITHOUT PREJUDICE** to his right to re-file it post-appeal. *Johnson v. United States*, 2009 WL 1704332 at * 1 (S.D. Ga. June 16, 2009).

SO REPORTED and **RECOMMENDED** this 16th day of June, 2010.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA